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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1029

FRED B. BLACK, JR., *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

HANS A. NATHAN
WARREN E. MAGEE
BERT B. RAND,
Counsel for Petitioner
1730 K Street, N.W.,
Suite 308
Washington 6, D. C.

Dated: May 25, 1966

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PAGE

INDEX

Page

REASONS FOR GRANTING THE REHEARING AND ISSUING THE WRIT 2

1. Petitioner's Trial Tainted by F.B.I. Wire Tapping and the Placing of an "Eavesdropping Device" in his Hotel Suite 2

2. Respondent Admits Placing of Listening Device and "Eavesdropping" on Conversations with Petitioner's Attorneys 3

3. Publicity Still Links Petitioner and Baker 8

4. Conflict of Decision Below with Intervening Decisions of this Court 9

5. Respondent's Brief in Opposition is Misleading .. 12

CONCLUSION AND PRAYER 14

APPENDIX

Affidavit of Peter R. Taft 1a

Affidavit of Fred B. Black, Jr. 17a

Affidavit of Clifford A. Jones 19a

TABLE OF CASES

Caldwell v. *U.S.* 205 F. 2d 879 (CA DC 1963) 4

C.I.R. v. *Tellier*, 383 U.S. 687, 86 S. Ct. 1118 .....9, 10

Coplon v. *U.S.*, 191 F. 2d 749 (CA DC 1951), cert. den. 342 U.S. 926 4

Massiah v. *U.S.*, 377 U.S. 201, 84 S. Ct. 1199 (1964) 4

State v. *Cory*, 382 P. 2d 1019 (S. Ct., Washington, 1963) 4

U.S. v. *Romano*, (November 1965) 382 U.S. 136, 86 S. Ct. 279 10

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PAGE

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Petitioner prays that this Court grant a rehearing of its Order of May 2, 1966 (stayed upon Petitioner's application by Order of the Honorable the Chief Justice, dated May 6, 1966), denying the petition for Writ of Certiorari, and that a Writ of Certiorari issue reversing the divided decision and judgment below of the United States Court of Appeals for the District of Columbia Circuit, with instructions that the Judgment and Sentence of the United States District Court for the District of Columbia be set aside and the indictments be dismissed.

REASONS FOR GRANTING THE REHEARING AND ISSUING THE WRIT

Intervening circumstances of substantial and controlling effect have occurred since the petition was filed:

1. Petitioner's Trial Tainted by F.B.I. Wire Tapping and the Placing of an "Eavesdropping Device" in his Hotel Suite.

A few days prior to this Honorable Court's Order denying the Petition for Certiorari herein, there was filed in the United States District Court for the District of Columbia, in a recently brought criminal case, *U.S.A.* v. *Robert G. Baker,* Criminal No. 39-66, an affidavit of Peter R. Taft, Esq., an attorney at law associated with Edward Bennett Williams, Esq., both counsel for Mr. Baker. It shows that the law offices of Mr. Clifford Jones in Las Vegas, Nevada, the office of Mr. Edward Levinson, and other locations in the Fremont Hotel in Las Vegas, as well as the Sands Hotel in Las Vegas and the apartment of its owner, Mr. Carl Cohen, have been the subject of extensive surreptitious electronic eavesdropping and illegal "bugging" by the Federal Bureau of Investigation.* The filing of this affidavit by Mr. Williams, a respected member of the bar of this Court, gives great credence to its factual statements. As of the time that this Petition leaves for the printer, no denial or controverting affidavit by the government appears of record.

Petitioner Fred B. Black, Jr., shows by his own affidavit (App. p. 17a *infra*) and the affidavit of Clifford Jones, Esq. (App. pp. 19a-20a, *infra*) that during the taxable years involved in his conviction and during the time that he has been under indictment, and

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* A copy of this affidavit is reproduced for the Court's convenience in the Appendix, pp. 1a-16a, *infra.*

until the present time, he was a friend and business associate of Messrs. Jones and Levinson. Frequently during the taxable years involved, and while preparing his defense against the income tax evasion charges here in issue, Petitioner was present at all the locations subject to the surreptitious eavesdropping and illegal wire tapping by Respondent's agents. (Black affidavit, App. p. 18a; Affidavit of Clifford Jones, Esq., App. p. 20a). He telephoned his then attorney (subsequently coerced into being the Government's main witness) Ralph Baird, from these locations and also freely conferred from these illegally "bugged" locations with the attorneys later employed in preparing his defense to the charges involved.

2. Respondent Admits Placing of Listening Device and "Eavesdropping" on Conversations With Petitioner's Attorneys.

While the Appendix to this Petition for Rehearing was being printed and the Petition itself was being readied for the printer, counsel for Petitioner was served with a "Memorandum for the United States," submitted and filed by the Solicitor General, admitting the installation of a listening device in Petitioner's hotel suite in Washington, D. C., thus corroborating the affidavit of Petitioner to the effect that he had reason to believe that such a listening device had also been installed in the suite. The Black affidavit had been signed one hour prior to the service of the Solicitor General's Memorandum.

In the light of the last minute confirmation by Respondent that a listening device had indeed been installed and operated in Petitioner's hotel suite, which suite had served both as his residence and his office. and where he had often conferred with his attorneys,

counsel immediately revised this petition to the extent possible in the few hours remaining before the printer's deadline. It is pointed out that the officially admitted illegal "eavesdropping," taken together with Respondent's insistence on bringing the case to trial at the zenith of adverse publicity, irrefutably confirms the finding of the dissenting Judge below, that Petitioner was deprived of due process of law and the right to a fair trial, guaranteed him by the Constitution.

Equally important, however, the eavesdropping evidence, confirmed by the Memorandum filed herein by the Solicitor General on the very day that this petition was about to be printed, shows that Petitioner was deprived of the effective assistance of counsel in contravention of the Sixth Amendment. *Coplon* v. *U.S.*, 191 F. 2d 749 (CA DC, 1951), *cert. den.* 342 U.S. 926; *Massiah* v. *U.S.*, 377 U.S. 201, 84 S. Ct. 1199 (1964), and *Caldwell* v. *U.S.*, 205 F. 2d 879 (CA DC 1953).

The Solicitor General suggests that this Court either deny the petition without prejudice to a further hearing in the District Court, or that this Court issue a Writ vacating the judgment of the Court of Appeals and remanding the case to the District Court for further proceedings, including an "adversary hearing, whether Petitioner's conviction should stand."

We agree that this Court should issue the Writ, but we respectfully submit that the Court in granting the Writ, should unequivocally direct that the judgment and sentence be set aside and the charges be dismissed.

In urging this action, Counsel can think of no better language than that of the Supreme Court of Washington, which Court (sitting *En Banc* in June of 1963), unanimously held in *State* v. *Cory*, 382 P. 2d 1019:

"We recognize the undoubted validity of the constitutional principles expressed in this opinion, and the others cited, and the conclusion expressed, that no conviction can stand, no matter how overwhelming the evidence of guilt, if the accused is denied the effective assistance of counsel. We do not think, however, that the granting of a new trial is an adequate remedy for the deprivation of the right to counsel where eavesdropping has occurred. So far as the opinion in the Coplon case reveals, the defendant did not ask that the case be dismissed, but merely urged that she be granted a new trial. In the Caldwell case, a footnote indicates that the opinion of the court was that a dismissal would not be proper unless the defendant could show that the invasion of his right to private consultation was so prejudicial that a subsequent trial necessarily would be unfair. In effect, the court in that case said that it was not necessary for the defendant to show that he had been prejudiced in the first trial, in order to secure a second trial, but that it would be necessary to show that he would also be prejudiced in a second trial, in order to secure a dismissal.

We do not appreciate the logic of this conclusion. There is no way to isolate the prejudice resulting from an eavesdropping activity, such as this. If the prosecution gained information which aided it in the preparation of its case, that information would be as available in the second trial as in the first. If the defendant's right to private consultation has been interfered with once, that interference is as applicable to a second trial as to the first. *And if the investigating officers and the prosecution know that the most severe consequence which can follow from their violation of one of the most valuable rights of a defendant, is that they will have to try the case twice, it can hardly be supposed that they will be seriously deterred from indulging in this very simple and convenient method of ob-*

taining evidence and knowledge of the defendant's trial strategy.

Not only was the conduct of the sheriff's office in violation of the constitutional provision assuring the right to counsel, but also of the statutory law, RCW 5.60.060(2), which establishes that communication between an attorney and his client shall be privileged and confidential.

In People v. Cahan, 44 Cal.2d 434, 445, 282 P.2d 905, 911, 50 A.L.R.2d 513 (1955), Judge Roger J. Traynor in explaining the reason that the court abandoned the rule that evidence illegally obtained was admissible and adopted the exclusionary rule, said:

> "* * * We have been compelled to reach that conclusion because other remedies have completely failed to secure compliance with the constitutional provisions on the part of police officers with the attendant result that the courts under the old rule have been constantly required to participate in, and in effect condone, the lawless activities of law enforcement officers.
>
> "* * * Out of regard for its own dignity as an agency of justice and custodian of liberty the court should not have a hand in such 'dirty business.' See McNabb v. United States, 318 U.S. 332, 345, 63 S.Ct. 608, 87 L.Ed. 819. Courts refuse their aid in civil cases to prevent the consummation of illegal schemes of private litigants. Lee On v. Long, 37 Cal.2d 499, 502-503, 234 P.2d 9, and cases cited; *a fortiori,* they should not extend that aid and thereby permit the consummation of illegal schemes of the state itself. See Roberts, J., concurring in Sorells v. United States, 287 U.S. 435, 453, 53 S.Ct. 210, 77 L.Ed 413 [86 A.L.R. 249]. It is morally incongruous for the state to flout constitutional rights and at the same time demand that its citizens observe the law."

This concept of how the judiciary should react to violation of constitutional rights, appeals to us.

We think that the court in Fusco v. Moses, supra, made the only disposition of the case which would afford an adequate remedy to the defendants and effectively discourage the odious practice of eavesdropping on privileged communication between attorney and client. There, the court ordered that the charges against the defendants should be dismissed and that they should be reinstated in their jobs.

It is our conclusion that the defendant is correct when he says that the shocking and unpardonable conduct of the sheriff's officers, in eavesdropping upon the private consultations between the defendant and his attorney, and thus depriving him of his right to effective counsel, vitiates the whole proceeding. The judgment and sentence must be set aside and the charges dismissed."

It is so ordered. (Emphasis supplied)

This case has assumed significance beyond the question of protecting the Constitutional rights of this Petitioner. We respectfully submit that at this time the Nation looks to this Court to do for the Republic what the Supreme Court of Washington did for the State of Washington: a decision unequivocally condemning such "eavesdropping activities" by the Department of Justice and its Federal Bureau of Investigation and unequivocally deterring all police officers from "indulging in this very simple and convenient method of obtaining evidence and knowledge of the defendant's trial strategy."

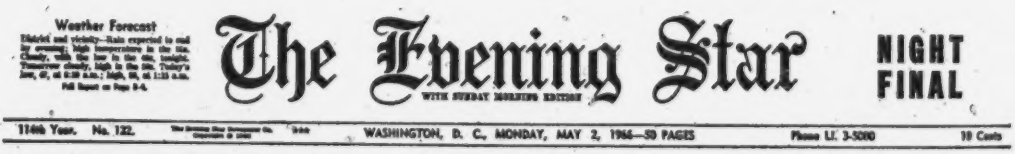
More than a new trial or "an adversary hearing" is needed: The shocking facts in this case call for a pronouncement by this Court that "the odious practice of eavesdropping on privileged communication between attorney and client results in vitiating the whole proceeding * * *", and requires, in the proper administration of justice, a final dismissal of the case.

While the "eavesdropping" developments overshadow the remainder of the grounds urged in this petition for rehearing, Counsel urge issuance of the Writ for the following reasons:

3. Publicity Still Links Petitioner and Baker

This Court is earnestly requested to consider as a whole the cumulative impact of the Justice Department's singling out of Petitioner for trial in Washington as a "Baker" associate at the height of the "Baker" publicity.*

This Court's Order denying certiorari on May 2, despite the great public interest in the denial on the same day of certiorari in the *Ginzburg* case,** produced banner headlines on the front pages of the Washington newspapers, a typical example reading:



Weather Forecast

The Evening Star

NIGHT FINAL

114th Year. No. 122. WASHINGTON, D. C., MONDAY, MAY 2, 1966—50 PAGES 10 Cents

Baker Associate Loses Tax Plea

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* The Harris Survey showed that the Baker publicity was the greatest single factor adversely affecting the President in his campaign for reelection (J.A. 145-6).

** *Ginzburg et al.* v. *United States*, 86 S. Ct. 942.

The Memorandum filed by the United States produced the following headline.

2—THE WASHINGTON DAILY NEWS, WEDNESDAY, MAY 25, 1966

Justice Makes Extraordinary Admission

Baker Case Figure's Hotel Room Bugged

Thus an allegedly simple tax case, when relentlessly pressed for trial at the height of the "Baker" publicity by a coordinated effort apparently directed against all persons who had business or personal connections with Messrs. Baker, Jones, Levinson and Cohen, *et al.*, coupled with illegal "bugging" and recording by Respondent, made a fair trial by an impartial jury impossible at that time. When the President of the United States made a public statement during the course of the trial* the Court should have immediately declared a mistrial.

4. Conflict of Decision Below With Intervening Decisions of This Court.

Since the filing of the Petition for Certiorari, this Court decided the tax case of *C.I.R.* v. *Tellier,* 383 U.S. 687, 86 S. Ct. 1118. In *Tellier* this Court said (p. 1120):

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* Which the jurors obviously read or learned about before they were "locked up" sua sponte by the Trial Judge, in accordance with his announced intention to "lock up" the jury if the jurors violated his instructions and read inflammatory articles in the press.

> We start with the proposition that the Federal income tax is a tax on net income, not a sanction against wrong-doing.

and quoted from the speech of Senator Williams on the floor of the Senate, (p. 1121):

> The object of this bill is to tax a man's net income; that is to say, what he has at the end of the year after deducting from his receipts his expenditures or losses.

The majority of the court below observed that Petitioner had to face "delicate problems of identification and characterization of the itemization of expenses" and evidence of petitioner's serving his clients in failing to itemize their expenses supplied the willful intent to defraud and evade income taxes for the years 1956, 1957 and 1958. The trial court, in not declaring a mistrial when Petitioner was characterized as an influence peddler by the prosecutor, violated the holding of this Court in *Tellier, supra.* The vigorous dissent of Senior Circuit Judge Miller actually is in harmony with *Tellier,* and states a verdict of innocence should have been directed at the conclusion of the prosecution's case for the very reasons enunciated in *Tellier* (Appendix to Petition, pp. 24a-27a).

In *U.S.* v. *Romano* (Nov. 22, 1965), 382 U.S. 136, 86 S. Ct. 279, defendants were convicted under 26 U.S.C. 5601 (b)(4), which provided that if, in a trial, defendant is shown to have been at the site or place where distilled spirits were produced, the presence of the defendant shall be deemed sufficient evidence to authorize conviction "unless the defendant explains such presence to the satisfaction of the jury." On appeal, the Court of Appeals reversed the convictions

because instructions based upon these statutory provisions violated the "Due Process Clause". This Court affirmed the Court of Appeals.

As in *Romano,* Respondent urged, and the trial court erroneously charged, notwithstanding the undisputed evidence from Petitioner's employers to the effect that the expenses were "expenses" of his employers, that absent proof as to their ultimate recipients, Petitioner was guilty of willful evasion of income taxes.

We submit that *Tellier* and *Romano* require, for the proper administration of justice in the Federal courts in income tax evasion cases, that this Court reverse the courts below and hold that a mere showing that Petitioner received monies to be disbursed by him for expenses of his *employers'* business (not expenses of Petitioner's business), did not shift the burden of proof to Petitioner to explain to whom his employers' money was disbursed on their behalf. Such shifting of the burden of proof in a criminal tax evasion case violates the due process clause of the Fifth Amendment.

Respondent's own instructions, captioned "How to Prepare Your Income Tax Returns" covering the years 1956, 1957 and 1958, were used by Petitioner's certified public accountant and by his tax attorney in the preparation of Petitioner's income tax returns. Petitioner's tax attorney Baird testified on these instructions. Based upon his professional knowledge of the preparation of income tax returns, he stated that in his opinion these sums (which Respondent claims should have been included in the income tax returns) should not have been included in such returns. This testimony was stricken and the trial

court withheld from the jury Respondent's instructions captioned, "How to Prepare Your Income Tax Return"* for the years in question. Instead of permitting Respondent's published instruction to be read by the jury, the trial court charged that all expenses paid or reimbursed must be included "in income" of the taxpayer and that the taxpayer would be allowed only deductions for "necessary expenses paid". The trial court further charged the jury: "The question for you to decide, therefore, is not whether they were called expenses, but whether they were actually spent for expenses". These instructions were erroneous, and shifted to Petitioner the burden of proving to whom his employers' expenses were disbursed.

5. Respondent's Brief in Opposition Is Misleading.

Respondent's Brief states (p. 5):

> "Petitioner participated in conferences with Muskrat and Baird * * * concerning the preparation of the returns. None of the 1956 omitted income was mentioned to Muskrat * * * and for 1957 and 1958 income, Muskrat relied on forms W-2 and 1099 * * *".

From this statement it would appear that Petitioner participated in the actual preparation of the returns for the years 1956, 1957 and 1958, with Muskrat having no information on the "1956 omitted

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* These instructions for 1958 (p. 6). state *in haec verba* that trade and business deductions and reimbursed expenses, "need not be shown on the return" of the taxpayer. The instructions further state in regard to "reporting" expenses, "You need not report these items on your return, either itemized or in total amount".

income". Muskrat admitted he only saw Petitioner on two occasions in 1956 (Tr. 1204); in 1957 he might have seen Petitioner on "two" occasions (Tr. 1204); and "possibly one or two times" in 1958 (Tr. 1205). Respondent's transcript references do not support the statements, and both Opinions below demonstrate their inaccuracy. The majority found (353 F. 2d 885, pp. 892 et sequ.):

> "The relationship between appellant and his associates, Ralph Baird and James Muskrat, is central to this issue. Baird, as has been said, was an old friend. He had served as appellant's attorney on various occasions since the beginning of his practice in 1938. When the appellant desired to establish his own public relations business in 1955, he used a room in Baird's Joplin, Missouri, law office as headquarters, most of appellant's time being spent travelling or in Washington. And, from this date, Baird played a prominent part in appellant's business, including the role already described in respect of Blyco Corp. He drafted contracts for appellant, as well as engaging in some travel and consultation work on his behalf.
>
> At the direction of appellant, Baird obtained the services of an accountant, James Muskrat, to prepare appellant's personal tax returns. Muskrat prepared appellant's returns for the years in question and also prepared the Blyco Corp. returns for 1957 and 1958. Appellant's files, records, and bank statements were available to him. But Muskrat's instructions were indefinite, and the supervision exercised by appellant was sporadic. When Muskrat did not know how to handle a particular item, he would consult with Baird.
>
> Appellant maintains that Baird and Muskrat possessed all the information necessary for pre-

> paring an accurate return and that he relied upon them to do so. He testified that Baird was responsible for maintaining, assembling and keeping the records of his activities; that all records accumulated during his travels were sent to Baird; and that the entire accounting operation for both his own activities and those of Blyco Corp. were entrusted to Baird and Muskrat. He further testified that he kept Baird informed of all his receipts."

An investigator, retained by Petitioner's former attorney, Bernard, testified that his examination in 1961 of the files maintained by Baird in Joplin revealed evidence of all the unreported items; and Senior Circuit Judge Miller, holding in his dissent that: "The jury should have been instructed to find him not guilty", (353 F. 2d, at pp. 896, 897) found:

> Baird, who had long been Black's attorney, and Muskrat, his young and inexperienced accountant, prepared the returns, with very little, if any participation by Black.
>
> * * * * *
>
> "It is significant that Muskrat said Black never told him to omit any item of income from his tax return. He testified that he depended on Baird for information and that he saw Black only a few times. And Baird admitted he told Black the amount of his income and his estimated tax, thus showing the latter had no part in the preparation of the return."

CONCLUSION AND PRAYER

Petitioner prays that this Honorable Court grant this Petition for Rehearing, and on rehearing, issue a Writ of Certiorari reversing the judgments below;

with instructions that the Judgment and Sentence be set aside and the charges be dismissed.

The affidavits reproduced in the Appendix to this Petition and the startling "Memorandum for the United States" filed by the Solicitor General on May 24, require no less to insure preservation of the Constitutional rights, not only of this Petitioner, but of every citizen of these United States.

Respectfully submitted,

HANS A. NATHAN
WARREN E. MAGEE
BERT B. RAND

By HANS A. NATHAN

Attorneys for Petitioner

Certificate of Counsel

I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and that the Petition is restricted to those grounds described in Rule 58 of this Honorable Court.

HANS A. NATHAN
Counsel for Petitioner

Dated May 25, 1966.

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APPENDIX

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APPENDIX

I

Affidavit of Peter R. Taft

(Filed April 25, 1966)

Robert M. Stearns, Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Cr. 39-66

AFFIDAVIT

UNITED STATES OF AMERICA
v.
ROBERT G. BAKER

PETER R. TAFT, being duly sworn, deposes and says:

1. I am an attorney for the defendant Robert G. Baker in this case. I am filing this affidavit in support of said defendant's Motion for Suppression of Evidence herein. Almost all of the information hereinafter stated concerning electronic eavesdropping and wiretapping in Las Vegas, Nevada, is based either on depositions under oath by officials of the Central Telephone Company in the case of *Edward Levinson, et al.* v. *Central Telephone Company*, Civil Action No. 643, United States District Court for the District of Nevada, or on conversations of attorneys for the defendant herein with attorneys for the Central Telephone Company and attorneys for the Department of Justice, or on official records of the Central Telephone Company. If the Court so requires, the defendant's attorneys will provide the Court with the depositions referred to and with the exact time, place and persons present and substance of said conversations relied upon.

2. On or about May 18, 1961, agents of the Federal Bureau of Investigation leased 25 telephone lines from their office building at 310 - 11th Street, Las Vegas, Nevada,

to the Central Office of the Central Telephone Company, Southern Nevada Division, at 125 Las Vegas Boulevard, Las Vegas, Nevada. The lines were leased in the name of a fictitious company known as Henderson Novelty Company. Bills were sent either to 301 South 11th Street, or to a Post Office Box rented in the name of Henderson Novelty Company: P.O. Box 1423, Las Vegas, Nevada. These 25 lines were known as the LL 24 series of leased lines, going from LL 24-1 to LL 24-25, using cable 12, pair 1476 to pair 1500, of the Central Telephone Company lines.

3. The Federal Bureau of Investigation employed these leased lines in a massive wire-tapping and eavesdropping surveillance of the Las Vegas gambling casinos and persons connected therewith. The Bureau's method was to select a room where conversations it wished to overhear were likely to occur; to place in the room, either by trespass or deception, a bugging device connected to its telephone system and so located as to pick up not only conversations in the room but also both ends of telephone conversations held in the room; and to order the telephone company to connect one of the leased lines to the telephone system of the room.

4. The exact number of such separate installations is unknown to affiant. Affiant has learned, however, from the service order journal of the Central Telephone Company, covering the years 1962 and 1963, that there were at least 24 to 26 separate uses of the LL 24 series of leased lines between January 1, 1962, and August, 1963. The total number of uses and all of the specific places which were bugged are facts which can be obtained only from the Federal Bureau of Investigation and, perhaps, from the Central Telephone Company. Of the eight bug locations known to affiant, all involved eavesdropping on gambling casinos or the homes of casino operators.

5. The bugging operation in the Fremont Hotel is typical of the F.B.I.'s use of the leased lines. On or about October

30, 1962, agents of the F.B.I. asked that LL 24-9 be connected with the mainframe of the Fremont Hotel in Las Vegas, Nevada. A copy of the service order, an official record of the Central Telephone Company, ordering the installation of this line is attached hereto as Exhibit A. Thereafter, said agents, with the aid and complicity of employees of the Central Telephone Company, placed an electronic eavesdropping and wiretapping device in the phone in the office of Edward Levinson and connected said device to LL 24-9. On information and belief, said device would pick up all conversations held in the office of Edward Levinson and both ends of telephone conversations made to or from the phone in said office. Said conversations were monitored and recorded at the FBI building. The device remained in the phone until Saturday, April 27, 1963, when it was discovered. Agents of the F.B.I. contacted the commercial office of the Central Telephone Company on Monday, April 29, 1963, and asked that LL 24-9 be disconnected. A copy of the telephone company record disconnecting said line is attached hereto as Exhibt B. Copies of the billing stubs for the period during which LL 24-9 was connected to the Fremont Hotel are attached hereto as Exhibit C.

6. During the period since 1961, the F.B.I. maintained a second eavesdropping device at the Fremont Hotel. Its specific location, however, is unknown to affiant.

7. On numerous occasions during the period of the Fremont Hotel bugging, defendant had meetings in the office of Edward Levinson and elsewhere at the Fremont Hotel. He also telephoned the aforementioned places on numerous occasions. In many of the aforesaid meetings and telephone conversations he discussed some of the matters referred to in the indictment. Everything said in those meetings and those telephone conversations came within the scope of the F.B.I.'s electronic surveillance and was overheard and recorded.

8. In the winter and spring of 1962 to 1963, defendant frequently stayed at the Sands Hotel in Las Vegas. When not there, he frequently telephoned to the apartment of Carl Cohen, one of the Sands' managing partners, and elsewhere in the Sands. In February, 1963, agents of the F.B.I. asked that LL 24-15 and LL 24-16 be attached to the mainframe of the Sands Hotel. The agents then placed an eavesdropping device to each of the leased lines in the apartment of Carl Cohen in the Sands Hotel. On information and belief, LL 24-5 was also attached to the mainframe of the Sands Hotel for the purpose of eavesdropping and/or wiretapping between 1961 and the present. LL 24-15 and LL 24-16 were billed to the Henderson Novelty Company until May, 1963, after which they were billed to Clark Associates, a successor company to Henderson Novelty Company created by agents of the F.B.I. after the discovery of the Fremont device. The Sands Hotel devices were discovered on July 2, 1963, and the agents ordered the lines disconnected on July 12, 1963. The installation and disconnect orders on LL 24-15 and LL 24-16 are attached hereto as Exhibits D and E. Consequently, just as in the case of the Fremont, all of defendant's conversations at the Sands and by telephone to the Sands, many relating to the subject matter of the indictment, were overheard and recorded.

9. A device just like those installed in the Sands was found in August, 1963, in the office of Major Riddle, a managing partner of the Dunes Hotel. How long it had been there and to which of the LL 24 lines it was attached are unknown to affiant. However, defendant, in the early part of 1963, was often in that office and often telephoned to that office, discussing some of the matters referred to in the indictment. His said conversations, like those earlier referred to in connection with the Fremont and the Sands, were overheard and recorded.

10. The defendant also had meetings in and spoke by telephone to the executive offices and other locations at the

Thunderbird Hotel and the home and law office of Clifford Jones in Las Vegas. On August 15, 1965, Jones had his law office at 230 Las Vegas Boulevard, Las Vegas, Nevada, checked by an electronics expert for possible eavesdropping or wiretapping devices. The expert found secreted in a telephone well in the wall, a small microphone and radio transmitter powered by current from the telephone lines. On the basis of present knowledge, affiant does not know how long said device was secreted in Clifford Jones' law office or who placed it there. Nor has affiant, up to this point, uncovered the evidence with which to prove that the F.B.I.'s massive electronic surveillance of the Las Vegas gambling casinos encompassed the Thunderbird Hotel. In view of the fact, however, that he can prove that the surveillance covered not only the Fremont, Sands and Dunes, but also the Desert Inn, Stardust and Flamingo, he submits that it is highly probable that inquiry at a hearing ordered by this Court will promptly reveal that the Thunderbird was covered as well. Defendant's conversations with Clifford Jones, named as a co-conspirator in the indictment, apparently loom large in the prosecution's case. Since some of those conversations occurred in Jones' bugged law office and others (see, e.g., Overt Act No. 3 in Count Nine of the indictment) in the undoubtedly bugged Thunderbird executive offices, frequently used by Jones for his meetings, there can hardly be any question that the conversations were overheard and recorded.

11. The F.B.I.'s large-scale electronic surveillance was not confined to Las Vegas. An identical operation, using leased telephone lines, eavesdropping devices built into normal telephone company connecting blocks, fictitious names, and complicity of telephone company employees, was uncovered in Kansas City during hearings held by the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary. The general scheme in Kansas City was described in the testimony of Arthur Brewster, Division Security Supervisor in the

legal department of the Southwestern Bell Telephone Company. See Transcript, volume 3, Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary, Surveillance Techniques of the Internal Revenue Service, Wednesday, October 30, 1965, Kansas City, Missouri, pp. 460-88. Mr. Brewster testified that he was the primary contact with the Federal Bureau of Investigation for the installation of leased lines. He stated that the Bureau probably contacted his office rather than the normal business office because the lines were used "for the purpose of listening devices". *Id.* at 462-63. These lines were strung from the FBI office to terminal spots at designated addresses. These terminal spots could be either at a utility pole behind the premises or in the basement. *Id.* at 480. Mr. Brewster testified on the basis of telephone company records that leased lines were installed from the FBI office to the premises of various suspected gambling joints in Kansas City on February 3, 1961 (two lines); on April 24, 1961; January 1, 1962 (two lines); February 19, 1962 (two lines); June 10, 1964; and January 5, 1965. *Id.* at 473-82. Mr. Brewster also stated that leased lines could be used for wiretapping. The testimony continues:

> "Senator Long. It could be true of the hotel, yes, if you wanted to wire into one of the hotels, you could come into the basement and it would be a simple matter to hook it on to any room in the hotel, wouldn't it?
>
> "Mr. Brewster. That's right."

Id. at 481. Mr. Brewster stated that if one were familiar with the terminals in a building terminal box, a wiretap by means of a leased line could be hooked up in 30 seconds. *Ibid.* Other telephone company employees testified to the attempted installation of a listening device into the Original Toy Shop in Kansas City. *Id.* at 439-40, 443-45. These employees were shown the listening devices by the agents of the F.B.I. *Id.* at 440, 445. They were described as being built into a connecting block, a normal piece of telephone

equipment. *Id.* at 439, 447. This is identical to the devices used in Las Vegas.

12. On information and belief, a similar F.B.I. eavesdropping and wiretapping scheme using leased lines has been uncovered in Miami, Florida.

13. On information and belief, the F.B.I. has conducted a similar electronic surveillance, including the use of leased telephone lines, in Washington, D. C. In the light of the F.B.I.'s close surveillance of defendant's conversations in Las Vegas, it is highly likely that they also included him in their Washington operation. Defendant's only assurance that his constitutional and legal rights will be protected can come from being afforded an opportunity at a hearing before this Court to learn the full extent to which his rights have been invoked. Only through such a hearing can defendant ascertain whether the F.B.I.'s Washington bugging operation has included his home, his law office, an apartment rented in his name at 308 N Street, S.W., and the various offices and telephones used by him in the United States Capitol Building.

PETER R. TAFT
Peter R. Taft
Counsel for defendant Baker

Subscribed and sworn to before me
this 23rd day of April, 1966.

MARY JO FRECHIEE
Notary Public, D.C.

My Commission Expires 4-14-70

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PAGE

CATEGORY 1 TYPE OF ORDER NO ORD. 86914

EFFECTIVE ACCESS 11/2/62
ADT 11/2/62 BJS
LISTING TEL. LL 24-9
STREET Kondorson Novolty Co
TOWN 301 S 11th
CLASSIFIED HEADING LV (HCS 1-11342)
EXTRA LISTING

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10/30 11/30 L 500
IC 350
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900

OUT

LAS VEGAS REPORTERS

Deponent
Defendants Exhibit D-1
for Identification
Reporter-Notary Initials

REMARKS Fremont Hotel

T/C

BILL ☐ IC 3.50

BRIDGE WITH		ROTARY WITH		SWITCH-ROOM		ROTARY BOOK	

TELEPHONE NUMBER	INTCEPT	CABLE	PAIR	TERMINAL	PAIR	FINDER	S-BLOCK	STA. NO.
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		10	1000					

RECORD

TYPE OF INSTRUMENT

MDF IDF
INSTALLER
TST. BD.
DATE COMP. 10-30

BLK LOG ASSIGNED 11-2

FORM T-80 REV. 8-60
NOV 6 1962
BILLING
DEC 4 1962

EXHIBIT A

CATEGORY | TYPE OF ORDER | NO | MD 73597

EFFECTIVE 4/29 5/2/63 | PW | TEL.

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ADV

LISTING

STREET

TOWN CLASSIFIED HEADING

EXTRA LISTING

4/29 — 5/31 5385 5332 53

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301 South 11th
LV (city)

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LAS VEGAS REPORTERS
Deponent
Defendants Exhibit for Identification C-1
Reporter-Notary Initials

REMARKS Fremont Hotel

Y/C

BILL ☐ FB- same

BRIDGE WITH	ROTARY WITH	SWITCH-ROOM	ROTARY BOOK

TELEPHONE NUMBER	INTCEPT	CABLE	PAIR	TERMINAL	PAIR	FINDER	T-BLOCK	STA.
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		10	1000					

RECORD

TYPE OF INSTRUMENT | MDF | IDF

INSTALLER Walter

TST. BD. 7

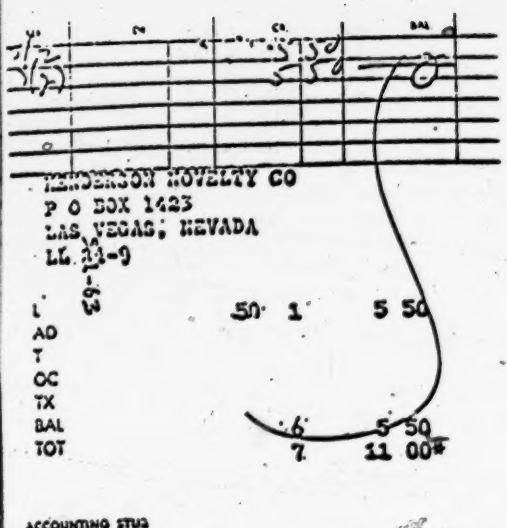
DLK | LOG | ASSIGNED 3-5-63 | DATE COMP. 4-29-63

FORM T-20 REV. 8-60

BILLING

MAY 20 1963

EXHIBIT B



HENDERSON NOVELTY CO
P O BOX 1423
LAS VEGAS, NEVADA
LL 24-9

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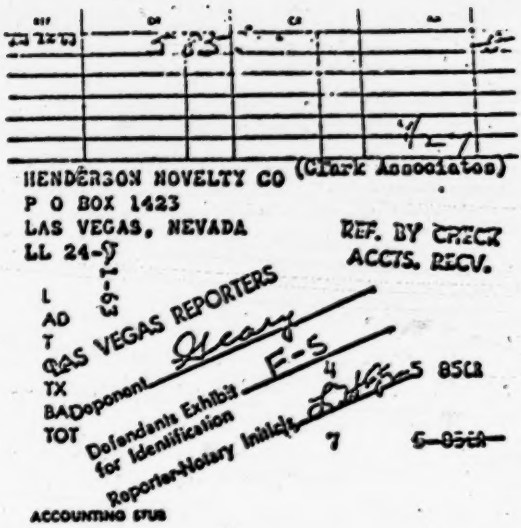
ACCOUNTING STUB



HENDERSON NOVELTY CO (Clark Associates)
P O BOX 1423
LAS VEGAS, NEVADA
LL 24-9

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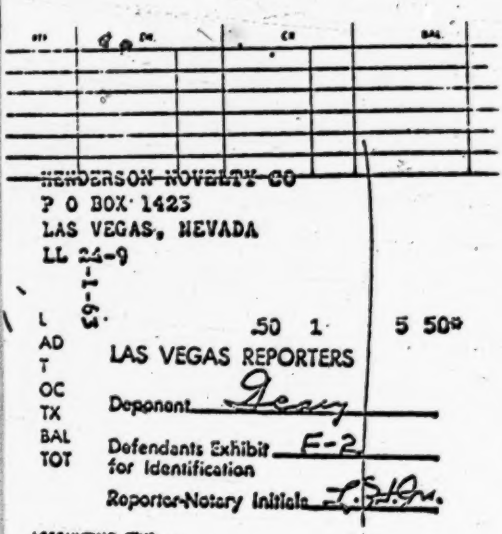
LAS VEGAS REPORTERS
Deponent Geary
Defendants Exhibit F-5
for Identification
Reporter-Notary Initials
4 5 85
7 5 85

ACCOUNTING STUB



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P O BOX 1423
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LL 24-9

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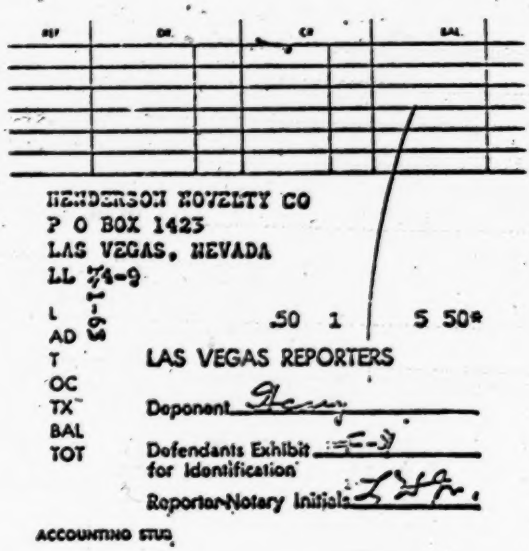
LAS VEGAS REPORTERS
Deponent Geary
Defendants Exhibit F-2
for Identification
Reporter-Notary Initials

ACCOUNTING STUB



HENDERSON NOVELTY CO
P O BOX 1423
LAS VEGAS, NEVADA
LL 24-9

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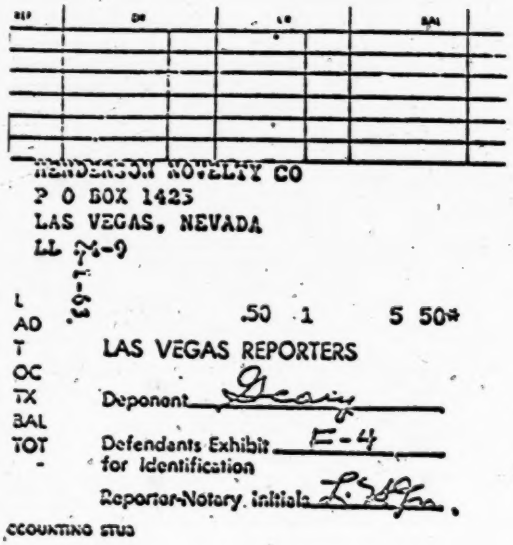
LAS VEGAS REPORTERS
Deponent Geary
Defendants Exhibit F-3
for Identification
Reporter-Notary Initials

ACCOUNTING STUB

EXHIBIT C



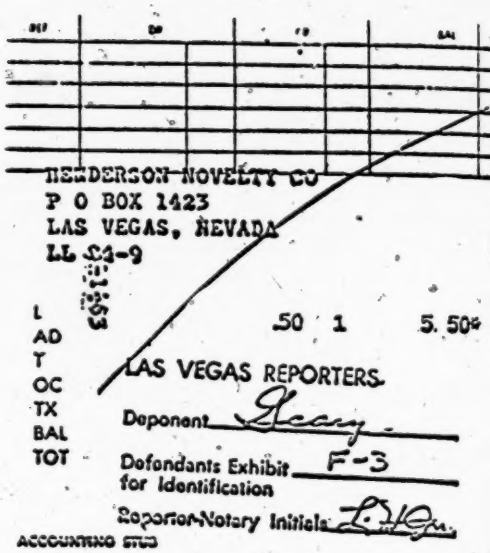


EXHIBIT C (Page 2)

DATE ORDER [illegible] TYPE OF ORDER RO ORD. 710082

EFFECTIVE ACCESS 2/20/63

ADV 2/19/63 BJS

TEL LL 24-15

LISTING Henderson Novelty Co

STREET 301 S 11th

TOWN CLASSIFIED HEADING LV (HC 1-113-A-2)

EXTRA LISTING —

IN

Con 1 Loc chan 15/4 ALM 18.75

2/20 2/24 L 536

ic 350

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940

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LAS VEGAS REPORTERS

Deponent Kleany

Defendants Exhibit for Identification J-13

Reporter-Notary Initials

REMARKS Sands Hotel

T/C

BILL ☐ I_c 3.50

BRIDGE WITH	ROTARY WITH	SWITCH-ROOM	ROTARY BOOK

TELEPHONE NUMBER	INTCEPT	CABLE	PAIR	TERMINAL	PAIR	FINDER	B. BLOCK	STA. NO.
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		242	721					
		104	317					

RECORD

TYPE OF INSTRUMENT

MDF IDF

INSTALLER [illegible]

TST. BD. 3

DLR LOG ASSIGNED 3-20 DATE COMP 3-20

FORM T-50 REV. 8-60

BILLING

FEB 23 1963

MAR 7 1963

EXHIBIT D

CATEGORY | TYPE OF ORDER | NO. | ORD. MD 19303

EFFECTIVE ACCESS 7/12/63 | 7/5/63 | PW | TEL:

ADT

LISTING

STREET

TOWN CLASSIFIED HEADING

EXTRA LISTING

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7/12-7/31 11.47 115. 12.64 7.99

LL 24-15

Clark Associates

Loo Chan 15/4 almi 18.75

OUT

LAS VEGAS REPORTERS

Deponent Gleason

Defendants Exhibit for Identification K-1

Reporter-Notary Initials

REMARKS

Sands

T/C

BILL ☐ FB- P O Box 1423 City

BRIDGE WITH	ROTARY WITH	SWITCH-ROOM	ROTARY BOOK

TELEPHONE NUMBER	INTCEPT	CABLE	PAIR	TERMINAL	PAIR	FINDER	S. BLOCK	STA. NO.
LL24-15		12	1410					
		242	721					
		1014	915					

RECORD

TYPE OF INSTRUMENT

MDF | IDF

INSTALLER Mallory

TOT. BD.

DATE COMP. 7-15

BLK | LOG | ASSIGNED 7-15

FORM T-80 REV. 8-60 BILLING

JUL 19 1963

EXHIBIT D (Page 2)

CATEGORY 1 D Serv LL NO 71803

EFFECTIVE 2/20/63
ACCESS 2/19/63 DJS

ADT

LISTING TEL.: LL 24-16

STREET Henderson Novelty C/O

TOWN 301 S 11th

CLASSIFIED HEADING LV (HC 1-113-A-2) IN

EXTRA LISTING

Con 1 Loc Chan 15/4 ALM 18.75

LAS VEGAS REPORTERS

Deponent Geary

Defendants Exhibit for Identification L-1

Reporter-Notary Initials L. S. Dr.

2/20 2/28 L 536 OUT
Ic 350
W 54
946

XXX Sands Hotel

T/C —

BILL ☐ Ic 3.50

BRIDGE WITH		ROTARY WITH		SWITCH-ROOM		ROTARY BOOK	

TELEPHONE NUMBER	INTCEPT	CABLE	PAIR	TERMINAL	PAIR	FINDER		I-BLOCK	STA. NO.
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		242	722						
		104	950						

RECORD

TYPE OF INSTRUMENT

MDF IDF

INSTALLER Mailroom

TST. BD.

ILK	LOG	ASSIGNED 2-20	DATE COMP. 2-20

FORM T-80 REV. 9-60

BILLING

FEB 23 1963 MAR 7 1963

EXHIBIT E

CATEGORY TYPE OF ORDER NO ORD. MD 75384

EFFECTIVE 7/12/63
ACCESS 7/15/63 PW TEL.
ADT
LISTING
STREET
TOWN
CLASSIFIED
HEADING
EXTRA
LISTING

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7/12-7/31 1149 12.64 7.99

LL 24-16

Clark Associates

Loc Chan 15/4 almi 18.75

OUT

LAS VEGAS REPORTERS

Deponent Geary

Defendants Exhibit for Identification M-1

Reporter-Notary Initials L. S. Jr.

REMARKS

Sands

T/C

BILL ☐ FB- P O Box 1423 City

BRIDGED WITH	ROTARY WITH	SWITCH-ROOM	ROTARY BOOK

TELEPHONE NUMBER	INTCEPT	CABLE	PAIR	TERMINAL	PAIR	FINDER	F. BLOCK	STA. NO.
LL24-16		12	1491					
		242	722					
RECORD		104	150					

TYPE OF INSTRUMENT

MDF IDF
INSTALLER Mallory
TOT. BD. 3
DATE COMP. 7-15

BLK LCC ASSIGNED 7-15

FORM T-80 REV. 8-60 (WE) JUL 15 1963

BILLING

EXHIBIT E (Page 2)

II

Petitioner's Affidavit

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1965

No. 1029

FRED B. BLACK, JR., *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

PETITIONER'S AFFIDAVIT IN SUPPORT OF PETITION FOR REHEARING

DISTRICT OF COLUMBIA, SS:

FRED B. BLACK, JR., being duly sworn, deposes and says:

1. My name is FRED B. BLACK, JR., and I am the Petitioner herein.

2. I have read the affidavit of PETER R. TAFT, Esquire, filed on April 25, 1966, in the case of *United States of America* v. *Robert G. Baker,* Criminal No. 39-66, in the United States District Court for the District of Columbia, shortly after it was brought to my attention through newspaper publicity.

3. Mr. EDWARD LEVINSON, the person mentioned in said affidavit as one of the persons whose premises were the subject of extensive wire-tapping, has been a personal friend of mine since January 1961, when I was introduced to him by Mr. CLIFFORD JONES.

4. CLIFFORD JONES, Esq., Las Vegas attorney and former Lieutenant Governor of that State, a co-defendant of Mr. BAKER in said case (mentioned in paragraph 10, page 5 of the Taft affidavit), whose home and law offices, according to the evidence attached to the affidavit, were also subject to extensive wire-tapping by the Federal Bureau of Investigation, has been a friend of mine since 1933.

5. Because of the friendship aforesaid and because of business dealings with both Mr. JONES and Mr. LEVINSON, I have had frequent occasions during the years from 1960 through 1965 to visit Mr. JONES at his home and at his law office, and Mr. LEVINSON at his office in the Fremont Hotel in Las Vegas, both socially and in connection with various business matters.

6. During the years between 1960 and 1966, I have frequently stayed at the Sands Hotel in Las Vegas, another location shown to have been wire-tapped by the Federal Bureau of Investigation (para. 8, page 4, Taft affidavit). I am acquainted with Mr. CARL COHEN, mentioned in the said affidavit, and have been in his apartment. Both Mr. COHEN's apartment and other locations at the Sands Hotel are shown by the Taft affidavit to have been subjected to the placing of eavesdropping devices connected with wire-tapping lines leased by the Federal Bureau of Investigation.

7. During the years between 1960 and 1966, I have frequently used the telephone in all the locations aforesaid and have conversed numerous times over the long distance telephone from these Las Vegas locations with my various attorneys, to wit: Mr. RALPH BAIRD, Joplin, Missouri; Mr. LAWRENCE BERNARD, Washington, D. C.; Mr. JOHN CYE CHEASTY (then of Washington, D. C.); and Mr. HANS A. NATHAN, Washington, D. C. During the years from 1960 to 1966, I also have had frequent telephone conversations with Mr. ROBERT G. BAKER at and from the places mentioned in the Taft affidavit, and also have had telephone conversations with Mr. BAKER at his offices in Washington.

8. At various times during the past four years, I have had the impression that my offices, located at 1730 K Street, N.W., Washington, D. C. and in the Sheraton-Carlton Hotel, Washington, D. C. (which latter location I also used occasionally as a residence) have been the subject of elec-

tronic surveillance and wire-tapping. Unable to obtain proof thereof, I refused to believe persons who suggested that this was the case. I therefore used the telephone at my office and my residence freely in discussions of my tax matters (and of my defense after I was indicted) with the attorneys aforementioned.

9. On the basis of the Taft affidavit, I now believe that not only the locations mentioned in the Taft affidavit, but also my own home and offices have been the subject of electronic surveillance by the Federal Bureau of Investigation in the manner indicated in the Taft affidavit.

FURTHER AFFIANT SAYETH NOT.

FRED B. BLACK, JR.
Fred B. Black, Jr.

SUBSCRIBED and sworn to before me, this 24th day of May, 1966.

LOUISE G. BURROUGHS
Notary Public

[SEAL]

My commission expires: Sept. 30, 1970

III

Affidavit of Clifford A. Jones, Esquire

STATE OF NEVADA }
COUNTY OF CLARK } ss:

CLIFFORD A. JONES, being first duly sworn on oath, deposes and says:

That I am an attorney at law, practicing at 230 Las Vegas Boulevard South, Las Vegas, Nevada; that I have known Mr. Fred Black for many years; that during the years 1958 to 1965, Mr. Black was in my office in Las Vegas, Nevada on many occasions, not less than 15 times

in number; that on several occasions while he was present in my office he discussed with me his problems connected with his tax matters and tax case; that I am informed and believe that on occasions he made long-distance telephone calls from my office to persons in Washington, D. C. and Joplin, Missouri.

DATED this 11th day of May, 1966.

CLIFFORD A. JONES
Clifford A. Jones

Subscribed and Sworn to before me
this 11th day of May, 1966.

KATHRYN WALDMAN
Notary Public in and for said
County and State

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PAGE